

REMARKS/ARGUMENTS

Favorable reconsideration of this application in light of the following discussion is respectfully requested.

Claims 1-8, 10-21, and 23-25 are pending in the present application. No claims are amended by the present amendment, thus, no new matter is added.

In the outstanding Office Action, Claims 1-8, 15-21 and 23-25 were rejected under 35 U.S.C. §112, first paragraph; and Claims 1-9 and 15-22 were rejected under 35 U.S.C. §103(a) as unpatentable over Morales et al. (U.S. Patent No. 4,847,837, herein "Morales") in view of Sandesara (U.S. Patent No. 5,327,427) and in further view of McLain, Jr. (U.S. Pat. No. 5,748,617, herein "McLain").

Claims 11-14 were allowed and Claims 10 and 23 were indicated as allowable if rewritten in independent form. Applicants acknowledge with appreciation the indication of allowable subject matter.

Initially, Applicants wish to thank Examiner Duc for confirming on August 14, 2007 that the present rejection is a **NON-FINAL** rejection. Specifically, although the Office Action summary section of the outstanding Action states that the "action is FINAL," Applicants note and the Examiner acknowledged that this description is in error.

In addition, Applicants wish to thank Examiner Duc for the telephone discussion conducted on October 4, 2007 regarding the present application. In the discussion the outstanding 35 U.S.C. §112, first paragraph, rejection was discussed.

With respect to the rejection of Claims 1-8, 15-21 and 23-25 under 35 U.S.C. §112, first paragraph as not supported by the specification, Applicants respectfully traverse this rejection.

As was acknowledged on pages 5-6 of the outstanding Action, the feature "a network load is distributed to each non-faulty splitting device such that the bit rate increase in each

non-faulty splitting device is less than the nominal bit rate,” recited in Claims 1 and 15 is supported on page 4, lines 3-16 on the specification.

However, the outstanding Action goes on to state that

...the passage fails to teach the limitation occurred when the central unit determines there is faulty in the terminal, the interface, or splitting device. It seem the evening out of the bit rates occurred to limit the overdimensioning, which has no correlation to determining faults.

However, Applicants respectfully traverse the assertion that the evening out of the bit rates has no correlation to determining faults. In other words, Applicants respectfully submit that the feature “when the central unit determines that the terminal, the interface or the splitting device is faulty, a network load is distributed to each non-faulty splitting device such that the bit rate increase in each non-faulty splitting device is less than the nominal bit rate,” is well supported by the originally filed disclosure.

As was discussed in the telephone discussion, page 3, beginning at lines 31, of the present disclosure clearly indicates that the features described on page 4, lines 3-16 are related to faults.

Specifically, page 3, line 31 to page, line 2 states

When a splitting device **develops a fault** all the information which was destined for it is sent to a neighboring information splitting device. This neighboring information splitting device makes it possible to obtain the second information influx of a terminal. **This picking up of the bit rate by this neighboring information splitting device is manifested as an increase in its bit rate.** However, **this surge in bit rate is easily absorbed since a splitting device possesses a bit rate margin.** (emphasis added).

Applicants note that page 4, lines 3-16 states

The process of the invention actually makes it possible to limit the overdimensioning which produces this bit rate margin and to even out the bit rates of all the information splitting devices by splitting a **bit rate surge** applied to the neighboring information splitting devices. A consequence of

the evening out of the bit rates is to increase a bit rate in the splitting devices by a lesser factor as compared with the nominal bit rate. With the process of the invention, a surge is applied to all the information splitting devices but this surge may be 50%, 33%, or 25% of the nominal bit rate, instead of 100% were all the surge to be shunted to the neighboring information splitting device.

Clearly the bit rate surge requiring the evening out of the bit rates is related to and is a result of the development of a fault in the system. In other words, there would be no bit rate surge applied to neighboring information devices unless there was a fault.

Accordingly, Applicants respectfully submit that every feature recited in Claims 1 and 15 is supported in the outstanding Action. Thus, Applicants respectfully request that the rejection under 35 U.S.C. §112, first paragraph be withdrawn.

In a response to the rejection of Claims 1-9 and 15-22 under 35 U.S.C. §103(a), Applicants respectfully request reconsideration of this rejection and traverse the rejection, as discussed next.

Morales discloses an error-detecting and error-correcting local area networked computer system, wherein an interfacing transceiver 18 attached to networks 12 and 14 is connected to a plurality of nodes 16.¹ Switches 34 with two outputs 36 and 38 are located between the nodes 16 and the interfacing transceivers 18 to connect or disconnect the nodes to the networks 12 and 14.²

However, Morales fails to teach that a splitting device is configured to support a higher bit rate than the nominal bit rate of the splitting device and when central unit determines that the terminal, the interface or the splitting device is faulty, *a network load is distributed to each non-faulty splitting device such that the bit rate increase in each non-faulty splitting device is less than the nominal bit rate*, as is recited in Applicants'

¹ See Morales in the Abstract.

² See Morales at column 4, lines 51-67 and in corresponding Figure 2.

independent Claim 1 and in slightly modified form (without the terminal) in independent Claim 15.

In addition, Applicants respectfully submit the reference Sandesara also fails to teach or suggest the above features that each splitting device is configured to support a higher bit rate than the nominal bit rate of the splitting device and when the central unit determines that the interface or the splitting device (and the terminal in Claim 1) is faulty, ***a network load is distributed to each non-faulty splitting device such that the bit rate increase in each non-faulty splitting device is less than the nominal bit rate.***

McLain describes an apparatus for testing and monitoring a telecommunication network having a number of nodes which include digital cross-connect switches, where each node can switch signals which arrive at different bit rates.

However, McLain does not describe or suggest that when the central unit determines the interface or the splitting device (and the terminal in Claim 1) is faulty, ***a network load is distributed to each non-faulty splitting device such that the bit rate increase in each non-faulty splitting device is less than the nominal bit rate.***

The outstanding action does not address this feature of the claims. Accordingly, Applicants respectfully request that any future Office Action specifically address the feature ***“a network load is distributed to each non-faulty splitting device such that the bit rate increase in each non-faulty splitting device is less than the nominal bit rate,”*** as this feature is not described or suggested in any of the cited references.

Therefore, even if the combination of Morales, Sandesara and McLain is assumed to be proper, the combination fails to teach every element of the claimed invention as noted above.

Accordingly, Applicants respectfully request reconsideration of this rejection based on these patents,³ and submit that Claim 1 and 15, and claims depending therefrom, patentably distinguish over Morales, Sandesara and McLain considered individually or together in any proper combination.

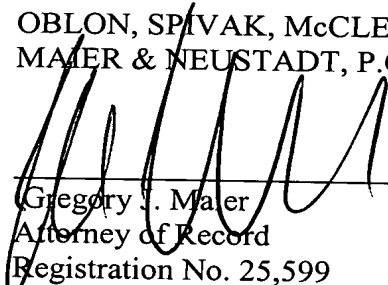
Consequently, in light of the above discussion, the application is believed to be in condition for formal allowance. An early and favorable action to that effect is respectfully requested.

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 08/07)

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Gregory J. Maier
Attorney of Record
Registration No. 25,599

James J. Kulbaski
Registration Number 34,648

I:\ATTY\JL\198944US\198944US_AM(10.4.2007).DOC

³ See MPEP 2142 stating, as one of the three "basic criteria [that] must be met" in order to establish a *prima facie* case of obviousness, that "the prior art reference (or references when combined) must teach or suggest all the claim limitations," (emphasis added). See also MPEP 2143.03: "All words in a claim must be considered in judging the patentability of that claim against the prior art."